

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MICHAEL MARCIANO, #1476476

Petitioner,

v.

ACTION NO. 2:24cv304

**CHADWICK DOTSON, Director
Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 submitted by pro se Petitioner Desmond Michael Marciano (“Marciano” or “Petitioner”). Marciano also filed a Motion to Stay his petition until such time as he has completed exhaustion of his state court remedies in the Supreme Court of Virginia. (ECF No. 2). Marciano challenges his 2019 convictions and sentences from the Greensville County Circuit Court for second-degree murder and use of a firearm in the commission of a felony. As a result of the convictions, Marciano was sentenced to serve 17 years in prison. Marciano’s petition alleges prosecutorial misconduct and violations of his due process rights.

The matter was referred to a United States Magistrate Judge for Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge’s Report and Recommendation filed October 17, 2024 recommends the court grant Respondent’s Motion to Dismiss and dismiss Marciano’s petition with prejudice for being time-barred, as he has not presented sufficient evidence to allow the court to consider his late filing. The Report and Recommendation advised each party of their right to object and the time limit for doing so. The

court has received no objections, and the time for filing objections has now expired.

Accordingly, the court does hereby accept and adopt the findings and recommendations set forth in the Report and Recommendation filed October 17, 2024, and it is therefore **ORDERED** that Marciano's Moton to Stay (ECF No. 2) is **DENIED**, Respondent's Motion to Dismiss (ECF No. 9) is **GRANTED**, and that Marciano's petition (ECF No. 1) is **DENIED** and **DISMISSED WITH PREJUDICE**.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335–38 (2003); Slack v. McDaniel, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/

ARENDA L. WRIGHT ALLEN,
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
November 20, 2024